

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

Karen Testerman, et al,

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Plaintiffs,

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v.

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Civil No. 1:23-cv-00499-JL-AJ

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Secretary of State David M. Scanlan, et al,

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Defendants.

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**DEFENDANTS’ PARTIALLY ASSENTED-TO
JOINT MOTION TO EXTEND DEADLINE TO RESPOND TO
PLAINTIFFS’ REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF**

The Defendants, New Hampshire Secretary of State David M. Scanlan (the “Secretary of State”) and Chris Ager, Chair of the New Hampshire Republican State Committee (“NHRSC”), through their respective counsel, request that this Court extend the deadline for the Defendants to respond to the Plaintiffs’ request for injunctive relief until December 6, 2023, which is the deadline for the Defendants to file a responsive pleading to the Plaintiffs’ complaint. The Plaintiffs assent to this requested relief. Alternatively, if the Court grants either of the Plaintiffs’ two motions to amend their motion for preliminary injunctive relief, the Defendants request that the Court set the deadline for the Defendants to respond to 14 days after the Court grants the motions to amend. The Plaintiffs do not assent to this alternative requested relief.

I. Background:

1. The Plaintiffs, Karen Testerman, Lynn-Diane Briggs, and Wayne Paul Saya, Sr., filed a complaint against the Defendants, seeking various injunctive relief. See ECF 1. The Plaintiffs additionally filed a “motion for expedited consideration for preliminary injunctive relief,” which sought preliminary injunctive relief against the Defendants. See ECF 2.

2. On November 16, 2023, the Plaintiffs filed returns of service, indicating that they served each Defendant on November 15, 2023. See ECF 6, 7.

3. On November 17, Plaintiff Saya filed a motion for leave to amend the Plaintiffs' motion for preliminary injunctive relief. See ECF 5.

4. On November 20, 2023, Plaintiff Saya submitted "exhibits for the amended motion for expedited preliminary injunctive relief," which included a declaration attesting to various facts in support of his amended motion for preliminary injunctive relief. See ECF 8; ECF 8-5. But see Fed. R. Civ. P. 6(c)(2) (requiring any affidavit supporting a motion to be served with the motion).

5. On November 20, 2023, Plaintiff Briggs filed a motion for leave to amend the Plaintiffs' motion for preliminary injunctive relief. See ECF 10. Plaintiff Briggs's motion included a declaration attesting to various facts. See ECF 10-2. But see Fed. R. Civ. P. 6(c)(2)

6. The deadline for the Defendants to file an answer or other responsive pleading to the Plaintiffs' complaint is December 6, 2023. See Fed. R. Civ. P., 12 (requiring a responsive pleading within 21 days of being served with the summons and complaint).

7. The deadline for the Defendants to file a response to the Plaintiffs' motion for preliminary injunctive relief is November 29, 2023. See Local Rule 7.1(b).

8. However, if the Court grants either of the Plaintiffs' subsequent motions to amend their motion for preliminary injunctive relief, the Defendants' deadline to respond to the amended motion would be 14 days after the Court grants the motions to amend.

II. Request for extension of deadline to respond to Plaintiffs' motion for preliminary injunctive relief:

9. The Defendants jointly request that the Court extend the deadline for the Defendants to respond to the Plaintiffs' motion for preliminary injunctive relief to December 6, 2023.

Alternatively, if the Court grants any of the Plaintiffs' requests to amend their motion for preliminary injunctive relief, the Defendants request that the Court set the deadline for the Defendants to object to the Plaintiffs' amended motion to 14 days after the Court grants such motions to amend. There is good cause for the Court to grant the Defendants' request relief.

10. First, there is good cause to grant the Defendants requested relief because the Plaintiffs filed motions to amend their motion for preliminary injunctive relief on November 17 and November 20, 2023. Granting the Defendants an extension ensures that the Defendants have sufficient time and opportunity to respond to the Plaintiffs' additional arguments, exhibits, and declarations that they submitted in support of their motion for preliminary injunctive relief. An extension is particularly warranted because Plaintiff Briggs and Plaintiff Saya each submitted affidavits on November 20, 2023, in support of their request for preliminary injunctive relief, see ECF 8-5 and ECF 10-2, despite court rules requiring affidavits supporting motions to be served with the motion, see Fed. R. Civ. P. 6(c)(2).

11. Second, the Defendants anticipate filing a motion to dismiss the Plaintiffs' complaint by the December 6, 2023, deadline. At this time, the Defendants expect that one argument they will assert is that the Plaintiffs have failed to state a claim. The Defendants similarly intend to object to the Plaintiffs' request for preliminary injunctive relief, including on the grounds that the Plaintiffs cannot prove they are likely to succeed on the merits because they have failed to state a claim. Because the Defendants' motion to dismiss the Plaintiffs' complaint and the Defendants' objection to the Plaintiffs' request for preliminary injunctive relief are likely to incorporate similar arguments, there is good reason to extend the Defendants' deadline to respond to the Plaintiffs' motion for preliminary injunctive relief to December 6, 2023—the deadline for the Defendants to file motions to dismiss.

12. In accordance with Local Rule 7.1(c), counsel for the Secretary of State reached out to each Plaintiff to request their concurrence to the Defendants' requested extension.

13. The Plaintiffs assented to the Defendants' request to extend the deadline to respond to the Plaintiffs' original motion for preliminary injunctive relief to December 6, 2023.

14. The Plaintiffs do not assent to the Defendants' alternative request to extend the deadline to respond to the Plaintiffs' original motion for preliminary injunctive relief to 14 days after the Court grants the Plaintiffs' motions to amend their motion for preliminary injunctive relief.

WHEREFORE, Defendants respectfully requests that this Honorable Court:

- A. Extend the deadline for the Defendants to respond to the Plaintiffs' motion for preliminary injunctive relief until December 6, 2023;
- B. Alternatively, if the Court grants the Plaintiffs' requests to amend their motion for preliminary injunctive relief, set the deadline for the Defendants to respond until 14 days after the Court grants the motions to amend;

Respectfully submitted,

Secretary of State David M. Scanlan

By his attorney,

THE OFFICE OF THE ATTORNEY GENERAL

Dated: November 29, 2023

/s/ Brendan A. O'Donnell
Brendan A. O'Donnell, Bar #268037
Assistant Attorney General
Election Law Unit
New Hampshire Department of Justice
1 Granite Place, Concord, NH 03301
brendan.a.odonnell@doj.nh.gov
603-271-1269

Chris Ager, New Hampshire Republican State
Committee

By his attorney,

Dated: November 29, 2023

/s/ Bryan K. Gould
Bryan K. Gould, Bar #8165
Jacob M. Rhodes, Bar #274590
CLEVELAND, WATERS AND BASS, P.A.
2 Capital Plaza, Concord, NH 03302
P.O. Box 1137, Concord, NH 03302
gouldb@cwbp.com
rhodesj@cwbp.com
603-224-7761

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by ECF on November 29, 2023, to all parties of record.

/s/ Brendan A. O'Donnell
Brendan A. O'Donnell